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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/522,920 | 04/22/2005 | Rainer Richter | 016906-0365 | 4566 |
| 22428 7590 11/24/2009 FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007 | | | | |
| EXAMINER | | | | |
| ALL, MOHAMMAD M | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 3744 | | | | |
| MAIL DATE | | DELIVERY MODE | | |
| 11/24/2009 | | PAPER | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/522,920

Applicant(s)

RICHTER ET AL.

Examiner

MOHAMMAD M. ALI

Art Unit

3744

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 November 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-17.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Mohammad M Ali/
Primary Examiner, Art Unit 3744

Continuation of 11, does NOT place the application in condition for allowance because: The argument of the Applicants are not persuasive. The Applicants argue that neither of the channels member 20 or 22 can be a flat tube because they have an open-sided structure that does not form a tube. The Examiner disagrees. Any channel which is flat can be termed as a flat tube irrespective of its open or closed sides. The gas channels as shown in Fig. 2 between channels 22 are also look similar open sided like channels 22 and cannot be termed they are not gas channel because of open sided. Therefore, the above argument of the Applicants is not based on facts and cannot be accepted. The Applicants further argue that Flurschuts does not disclose a heat exchanger comprising, among other things, a soldered heat exchanger net work comprising flat tubes and corrugated ribs. Regarding flat tubes, the Examiner has replied above. Regarding soldered/brazing, Flurschuts discloses that channels 20 having inserts of copper or other brazing material are first placed open side up in a special jig having parallel slots corresponding to the desired spacing of the undulated wire strips on the passage walls. See column 2, lines 27-30. Apart from that the fin member 17 as seen in Fig. 3 is of corrugated type and portion 14 is the rib of the fin. Therefore, the above argument of the Applicants is not true and cannot be accepted. The Applicant further argue that sinusoidally bent wires of Flurschuts, which are joined to plates 10 and 12, do not have middle portions with a lower curvature than first and second outer portion of the arcuate region. The Examiner disagrees. When it is disclosed sinusoidally bent wires it should be look like a sinusoidally or corrugated fin member. Both of them wire and fin member being sinusoidally or corrugated it must have both lower and upper curvatures to make it sinusoidally or corrugated. Therefore, the above argument of the Applicants are also not correct. Thus the rejections are ok.

/MA/